



General Terms and Conditions of Delivery

Im Neuen Felde 88-90, D-29525 Uelzen
Phone +49 (0) 581 / 882 - 0, Fax +49 (0) 581 / 882 - 22

§ Section 1 Validity

(1) All deliveries, performance and offers of Winkelmann Elektromotoren GmbH Co. KG (hereinafter referred to as "Seller") are exclusively based on these General Terms and Conditions of Delivery. They are an integral part of all contracts that the Seller concludes with its contractual partners (hereinafter also referred to as "Customers") concerning the deliveries or performance it offers. They shall also apply to all future deliveries, performance or offers to the Customer, even if they are not agreed to separately again. The general terms and conditions of delivery are available under www.winkelmann.com/downloads

(2) General terms and conditions of the Customer or third parties shall not apply, even if the Seller does not specifically object to their validity in individual cases. Even if the Seller refers to a letter containing or referring to the general terms and conditions of the Customer or a third party, this shall not be construed as the acceptance of the applicability of those terms and conditions.

§ 2 Offer and conclusion of contract

(1) All offers of the Seller are subject to change and non-binding, unless they are expressly marked as binding or contain a specific acceptance period. The Seller may accept orders or commissions within (14) days of receipt.

(2) Solely decisive for the legal relationship between the Seller and the Customer is the written sales contract, including these General Terms and Conditions of Delivery. This contract fully reflects all agreements between the parties to the contract on the subject matter of the contract. Oral promises made by the Seller prior to the conclusion of this contract are legally non-binding and oral agreements between the contracting parties are replaced by the written contract, unless it is expressly stated in each case that they continue to be binding.

(3) Supplements and amendments to the agreements made, including these General Terms and Conditions of Delivery, must be made in writing to be effective. With the exception of managing directors (*Geschäftsführer*) or authorised signatories (*Prokuristen*), the Seller's employees are not entitled to make oral agreements deviating from the written agreement. To maintain the written form, telecommunication transmission, in particular by fax or e-mail, is sufficient, provided that a copy of the signed declaration is transmitted.

(4) Information provided by the Seller on the object of the delivery or performance (e.g. weights, dimensions, utility values, loading capacity, tolerances and technical data) as well as our representations of the same (e.g. drawings and illustrations) are only approximately authoritative, unless the usability for the contractually intended purpose requires exact conformity. They are not guaranteed characteristics of quality, but descriptions or identifications of the delivery or performance. Customary deviations and deviations which are based on legal regulations or represent technical improvements, as well as the replacement of components by equivalent parts, are

permissible, provided that they do not impair the usability for the contractually intended purpose.

(5) The Seller reserves the ownership or copyright of all offers and cost estimates submitted by him as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the Customer. Without the express consent of the Seller, the Customer may not make these items accessible to third parties, make them known, use them itself or have them used or reproduced by third parties, either as such or in terms of their content, without the express consent of the Seller. At the request of the Seller, it shall return these objects in full to the Seller and destroy any copies that may have been made if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of electronically provided data for the purpose of normal data backup.

§ 3 Prices and payment

(1) The prices apply for the scope of performance and delivery provided for in the order confirmations. Additional or special services shall be charged separately. The prices are in EUR ex works (*EXW*) excluding packaging, statutory value added tax, and in case of export - customs duties, as well as fees and other public charges.

(2) Insofar as the agreed prices are based on the Seller's list prices and delivery is not to be made until more than four months after conclusion of the contract, the Seller's list prices valid at the time of delivery shall apply (in each case less an agreed percentage or fixed discount).

(3) Invoice amounts must be paid after receipt of invoice within thirty days without any deductions, unless otherwise agreed in writing. The date of payment is the date of receipt by the Seller. Payment by cheque is excluded, unless it is agreed separately in individual cases. If the client does not make payment when due, interest of 5% p.a. shall be charged on the outstanding amounts from the due date; the right to claim higher interest and further damages in the event of default shall remain unaffected.

(4) Set-offs with counterclaims of the Customer or the retention of payments on account of such claims is only permissible insofar as the counterclaims are undisputed or have been legally established or result from the same order under which the delivery in question was made.

(5) The Seller is entitled to require advance payment or the provision of security prior to executing or rendering outstanding deliveries or performance if, after conclusion of the contract, it becomes aware of circumstances which are likely to substantially reduce the creditworthiness of the Customer and which jeopardise the payment of the Seller's outstanding claims by the Customer under the respective contractual relationship (including from other individual orders to which the same framework contract applies).

§ 4 Delivery and delivery time

(1) Deliveries shall be ex works (*ab Werk*).



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(2) Deadlines and dates for deliveries and performance mentioned by the Seller are always only approximate, unless a fixed period or date has been expressly promised or agreed. If shipment has been agreed, delivery periods and delivery dates refer to the time of handover to the forwarding agent, carrier or other third party commissioned with the transport.

(3) The Seller may - without prejudice to its rights arising from default on the part of the Customer - demand from the Customer an extension of delivery and performance periods or a postponement of delivery and performance dates by the period of time during which the Customer does not fulfil its contractual obligations towards the Seller.

(4) The Seller is not liable for the impossibility of delivery or for delays in delivery, insofar as these are caused by force majeure or other events that were not foreseeable at the time of the conclusion of the contract (e.g. operational disruptions of all kinds, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortage of labour, energy or raw materials, difficulties in procuring necessary official permits, official measures or the failure to receive delivery, incorrect delivery or untimely delivery from suppliers), for which the Seller is not responsible. If such events make it considerably more difficult or impossible for the Seller to deliver or perform and the hindrance is not only of a temporary nature, the Seller shall be entitled to withdraw from the contract. In the event of impediments of temporary duration, the delivery or performance deadlines shall be extended or the delivery or performance dates shall be postponed by the period of the impediment plus a reasonable ramping-up period. Insofar as the Customer cannot reasonably be expected to accept the delivery or performance as a result of the delay, it may withdraw from the contract by immediate written declaration to the Seller.

(5) The Seller is only entitled to make partial deliveries if

- the partial delivery can be used by the Customer within the scope of the contractual purpose,

- the delivery of the remaining ordered goods is ensured and

- the Customer does not incur any significant additional work or additional costs as a result of this (unless the Seller agrees to bear these costs).

(6) If the Seller is in default with a delivery or performance or if a delivery or performance becomes impossible for it for whatever reason, the Seller's liability for damages shall be limited in accordance with § 8 of these General Terms and Conditions of Delivery.

§ 5 Place of performance, shipping, packaging, transfer of risk, acceptance

(1) The place of performance for all obligations arising from the contractual relationship is 29525 Uelzen, Germany, unless otherwise specified. If the Seller is also responsible for installation, the place of performance shall be the place where the installation is to be carried out.

(2) The mode of shipping and packaging are subject to the dutiful discretion of the Seller.

(3) Risk shall pass to the Customer at the latest when the delivery item is handed over (whereby the start of the loading process shall be decisive) to the forwarding agent, carrier or other third party designated to carry out the shipment. This shall also apply if partial deliveries are made or the Seller has assumed other services (e.g. shipment or installation). If shipment or handover is delayed as a result of circumstances for which the Customer is responsible, the risk shall pass to the Customer on the day on which the delivery item is ready for shipment and the Seller has notified the Customer of this.

(4) Storage costs after transfer of risk shall be borne by the Customer. In the event of storage by the Seller, the storage costs shall amount to 0.25 % of the invoice amount of the delivery items to be stored per completed week. Each party is free to assert and prove further or lower storage costs.

(5) The Seller shall insure the consignment against theft, breakage, transport, fire and water damage or other insurable risks only at the express request of the Customer and at the Customer's expense.

(6) Insofar as an acceptance has to take place, the object of purchase shall be deemed to be accepted if

- the delivery and, if the Seller also owes the installation, the installation is completed,

- the Seller has notified the Customer of this with reference to the fictional acceptance in accordance with this § 5 (6) and has requested the Customer to accept the goods,

- since delivery or installation twelve working days have passed or the Customer has started to use the object of purchase (e.g. has put the delivered equipment into operation) and in this case six working days have passed since delivery or installation, and

- the Customer has failed to accept the goods within this period for any reason other than a defect notified to the Seller which makes the use of the purchased goods impossible or substantially impairs their use.

§ 6 Warranty, material defects (*Sachmängel*)

(1) The warranty period is one year from delivery or, if acceptance is required, from acceptance. This period shall not apply to claims for damages by the Customer arising from injury to life, body or health or from intentional or grossly negligent breaches of duty by the Seller or its vicarious agents, which shall be time-barred in accordance with the statutory provisions.

(2) The delivered items must be carefully examined immediately after delivery to the Customer or to a third party designated by the Customer. With regard to obvious defects or other defects which would have been recognisable in an immediate, careful inspection, they shall be deemed to have been approved by the Buyer if the



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Seller does not receive a written notice of defects within seven working days of delivery. With respect to other defects, the goods shall be deemed to be approved by the Buyer if the Seller does not receive a written notice of defects within seven business days after the date on which the defect became apparent; however, if the defect was apparent at an earlier time during normal use, this earlier time shall be decisive for the commencement of the notice period. At the Seller's request, a delivered item complained about shall be returned to the Seller carriage paid. If the complaint is justified, the Seller shall reimburse the costs of the most inexpensive shipping route; this shall not apply if the costs increase because the delivery item is located at a place other than the place of intended use.

(3) In the event of material defects (*Sachmängel*) of the delivered items, the Seller shall be obliged and entitled to choose within a reasonable period of time between repair or replacement. In the event of failure, i.e. impossibility, unreasonableness, refusal or unreasonable delay of the repair or replacement delivery, the Customer may withdraw from the contract or reduce the purchase price appropriately.

(4) If a defect is due to the fault of the Seller, the Customer may demand compensation for damages under the conditions specified in § 8.

(5) In the case of defects in components from other manufacturers which the Seller cannot remedy for reasons of licensing law or for factual reasons, the Seller shall, at its discretion, either assert its warranty claims against the manufacturers and suppliers for the account of the Customer or assign them to the Customer. Warranty claims against the Seller for such defects shall only exist under the other conditions and in accordance with these General Terms and Conditions of Delivery if the legal enforcement of the above-mentioned claims against the manufacturer and suppliers has been unsuccessful before the courts or, for example due to insolvency, is futile. For the duration of the legal dispute, the statute of limitations of the relevant warranty claims of the Customer against the Seller is suspended.

(6) The warranty shall not apply if the Customer modifies the delivery item or has it modified by a third party without the Seller's consent and the remedying of the defect is thereby rendered impossible or unreasonably difficult. In any case, the Customer shall bear the additional costs of remedying the defect arising from the modification.

(7) A delivery of used objects agreed with the Customer in individual cases shall be effected under exclusion of any warranty for material defects (*Sachmängel*).

§ 7 Property rights

(1) In accordance with the provisions of this § 7, the Seller shall be responsible for ensuring that the delivery item is free from industrial property rights or copyrights of third parties. Each contracting party shall immediately notify the other contracting party in writing if claims are asserted against it for the infringement of such rights.

(2) In the event that the delivery item infringes an industrial property right or copyright of a third party, the Seller shall, at its discretion and at its expense, either modify or replace the delivery item in such a way that third-party rights are no longer infringed, but the delivery item continues to fulfil the contractually agreed functions, or procure the right of use for the Customer by concluding a licence agreement with the third party. If the Seller does not succeed in doing so within a reasonable period of time, the Customer shall be entitled to withdraw from the contract or to reduce the purchase price appropriately. Any claims for damages on the part of the Customer are subject to the restrictions of § 8 of these General Terms of Delivery.

(3) In the event of infringements of rights by products of other manufacturers supplied by the Seller, the Seller shall, at its discretion, either assert its claims against the manufacturers and sub-suppliers for the account of the Customer or assign them to the Customer. In these cases, claims against the Seller shall only exist in accordance with the provisions of this § 7 if the legal enforcement of the above-mentioned claims against the manufacturers and sub-suppliers has been unsuccessful before the courts or, for example due to insolvency, is futile.

§ 8 Liability for damages due to fault

(1) The Seller's liability for damages, irrespective of the legal grounds, in particular due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contract negotiations and tortious acts is limited in accordance with this § 8, insofar as fault is involved.

(2) The Seller shall not be liable in the event of simple negligence on the part of its corporate bodies (*Organe*), legal representatives, employees or other vicarious agents, unless it is a matter of a breach of essential contractual obligations. Essential contractual obligations are the obligation to deliver and install the delivery item on time, its freedom from defects of title as well as such material defects (*Sachmängel*) that impair its functionality or usability more than only insignificantly, as well as consulting, protection and care obligations which are intended to enable the Customer to use the delivery item in accordance with the contract or which are intended to protect the life and limb of the Customer's personnel or to protect its property from considerable damage.

(3) Insofar as the Seller is liable for damages in principle pursuant to § 8 (2), this liability is limited to damages which the Seller foresaw at the time of conclusion of the contract as a possible consequence of a breach of contract or which it should have foreseen if it had exercised due diligence. Indirect damages and consequential damages resulting from defects of the delivery item are only eligible for compensation if such damages are typically to be expected when the delivery item is used as intended.

(4) In the event of liability for simple negligence, the Seller's obligation to pay compensation for material damage and any further financial losses resulting therefrom shall be limited to an amount of 7.500.000,00



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EUR per case of damage, even if it involves a breach of essential contractual obligations.

(5) The above exclusions and limitations of liability apply to the same extent in favour of the Seller's corporate bodies (*Organe*), legal representatives, employees and other vicarious agents.

(6) Insofar as the Seller provides technical information or acts in an advisory capacity and this information or advice is not part of the contractually agreed scope of services owed by it, this shall be free of charge and to the exclusion of any liability.

(7) The limitations of this § 8 do not apply to the liability of the Seller due to intentional behaviour, for guaranteed characteristics, due to injury to life, body or health or according to the product liability law.

§ 9 Retention of title

(1) The following agreed reservation of title serves as security for all existing current and future claims of the Seller against the Customer arising from the supply relationship between the contracting parties electric motors (including balance claims from a current account relationship limited to this supply relationship)

(2) The goods delivered by the Seller to the Customer remain the property of the Seller until all secured claims have been paid in full. The goods as well as the goods taking their place according to the following provisions and covered by the reservation of title are hereinafter referred to as "Reserved Goods".

(3) The Customer shall store the Reserved Goods free of charge for the Seller.

(4) The Customer is entitled to process and sell Reserved Goods in the ordinary course of business until the event of realisation (para. 9). Pledging and transfer of ownership by way of security are not permitted.

(5) If the Reserved Goods are processed by the Customer, it is agreed that the processing is carried out in the name and for the account of the Seller as manufacturer and that the Seller directly acquires ownership or - if the processing is carried out from materials of several owners or the value of the processed item is higher than the value of the Reserved Goods - co-ownership (fractional ownership/*Bruchteilseigentum*) of the newly created item in the ratio of the value of the Reserved Goods to the value of the newly created item. In the event that no such acquisition of ownership can occur with the Seller, the Customer hereby transfers its future ownership or - in the above-mentioned ratio - co-ownership of the newly created object to the Seller as security. If the Reserved Goods are combined or inseparably mixed with other objects to form a uniform object and if one of the other objects is to be regarded as the main object, the Seller shall, insofar as the main object belongs to him, transfer to the Customer the co-ownership of the uniform object proportionally in the ratio specified in sentence 1.

(6) In the event of resale of the Reserved Goods, the Customer hereby assigns to the Seller by way of security the resulting claim against the purchaser - in the case of co-ownership of the Seller of the Reserved Goods, proportionally in accordance with the proportion of co-ownership. The same shall apply to other claims which take the place of the Reserved Goods or otherwise arise with regard to the Reserved Goods, such as insurance claims or claims from tort in the event of loss or destruction. The Seller revocably authorises the Customer to collect the claims assigned to the Seller in its own name. The Seller may only revoke this direct debit authorisation in the event of realisation.

(7) If third parties access the Reserved Goods, in particular by means of seizure (*Pfändung*), the Customer shall immediately inform them of the Seller's ownership and inform the Seller thereof in order to enable him to enforce its ownership rights. If the third party is not in a position to reimburse the Seller for the judicial or extrajudicial costs incurred in this connection, the Customer shall be liable to the Seller for this.

(8) The Seller shall release the Reserved Goods as well as the objects or claims taking their place, insofar as their value exceeds the amount of the secured claims by more than 50%. The selection of the objects to be released thereafter shall be at the discretion of the Seller.

(9) If the Seller withdraws from the contract in the event of behaviour contrary to the contract on the part of the Customer - in particular default of payment - (case of realisation), the Seller is entitled to demand the return of the Reserved Goods.

§ 10 Final provisions

(1) If the Customer is a merchant, a legal entity under public law or a special fund under public law or has no general place of jurisdiction in the Federal Republic of Germany, the place of jurisdiction for all possible disputes arising from the business relationship between the Seller and the Customer shall be 29525 Uelzen or the registered office of the Customer at the Seller's option. However, in these cases, 29525 Uelzen shall be the exclusive place of jurisdiction for legal actions against the Seller. Mandatory statutory provisions regarding exclusive places of jurisdiction shall remain unaffected by this provision.

(2) The relations between the Seller and the Customer are subject exclusively to the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

(3) Insofar as the contract or these General Terms and Conditions of Delivery contain loopholes, the legally effective provisions which the contracting parties would have agreed to in accordance with the economic objectives of the contract and the purpose of these General Terms and Conditions of Delivery if they had been aware of the loophole, shall be deemed agreed to fill these loopholes.